

[1st February 1934]

III.—A BILL FURTHER TO AMEND THE MADRAS IMPARTIBLE ESTATES ACT, 1904, FOR CERTAIN PURPOSES (BILL No. 17 OF 1933).

Mr. A. V. BHANOJI RAO:—"Mr. President, Sir, I beg to move that the Bill further to amend the Madras Impartible Estates Act, 1904, for certain purposes (Bill No. 17 of 1933), as amended by the Select Committee, be taken into consideration."

Mr. SAMI VENKATACHALAM CHETTI:—"Mr. President, I rise to a point of order with regard to the admissibility of taking up this subject just at present. I understand that at a previous sitting of this Council, this same subject was not allowed to be considered, because one hon. Member objected to it on the ground that sufficient notice had been given, and you upheld the objection. I take it therefore that the business has dropped out of the agenda. Otherwise, there is no reason why it could not have been taken up then and there and disposed of. If the procedure proposed to be adopted to-day is sought to be justified on the ground that the Bill can be taken up to-day as it has completed the 15 days' notice prescribed by Standing Orders, I beg to submit, in the first place, that the 15 days' period must be from the date on which the second notice was given and not from the date of the original notice."

"Apart from that, the business of non-official days is fixed in a certain manner. If I may invite your attention to page 2 of the Legislative Council Instructions, it gives the rules guiding the arrangement of the agenda for non-official days. In the first place, sufficient notice should be given whether of Bills or of Resolutions. They should be subject to a ballot and in the case of Bills, they should be arranged in the order of the stages to which they have advanced. After the ballot has been held and the relative positions of the various categories of business settled, you cannot transpose one category of business right across into another category of business. One category of business is Bills; that we have finished and that stage is over. However, if during the discussion of Bills, there has been a specific resolution of the Council postponing a particular item of business in that category for discussion at a later stage, then that procedure is governed by a different rule. But so long as that has not been done, so long as that item of business has gone out of the agenda for one reason or other—in this case, it was want of sufficient notice which was objected to and the objection was upheld by the President; but an item of business may drop out of the agenda for some other reason also, as for instance if the member in charge of it happens to be absent when it is called by the President—it is not possible for the Member to keep his old notice alive and have the business set down for discussion for another day, simply because the Council happens to sit on that day for the transaction of some other business. Mr. President, I beg of you to regard the objection as a very serious one. The Bill was given notice of at a particular time and that notice was not considered to be sufficient and the Bill was eliminated from the agenda. If it is possible for a non-official

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Member to give notice of his motion again and impose upon the Council that same business in the midst of other business, it would be impossible to carry on other business. If you create a precedent like that, it would be difficult for the Council to carry on other business. For instance, if Mr. Bhanoji Rao's Bill is to be taken up to-day, what will happen is all the resolutions which will have a chance of being discussed cannot be discussed to-day. The advantage which hon. Members who have balloted resolutions in their names have will be taken away from them by quite a devious method not contemplated in the Standing Orders.

"I should like to be enlightened if there is any justification for allowing this Bill to be taken into consideration while the House is engaged in dealing with resolutions which have been balloted. I do not think that even the hon. the President can allow a motion for the consideration of a Bill to be taken up unless it has undergone the incidents relating to such motions. That is to say, notice of the motion must have been given some days before and the motion must be balloted and put in its proper place on the agenda. I do not think even the hon. the President can waive these conditions. I am handicapped at present, because the hon. Member in charge of the Bill has not put forward any reasons why this Bill should be allowed to come up again at this stage. Before you give your ruling, Mr. President, I should like to hear what the other side has to say in justification of their bringing forward this Bill for the consideration of the House at a time when the House is engaged with resolutions."

* The hon. the PRESIDENT:—"I do not think it is necessary at this stage to ask the hon. the Mover of the Bill to state the reasons for the urgency of the Bill. As regards the point of order raised by the hon. Member from the City of Madras, I wish to inform him that Bills that have passed through a Select Committee need not be balloted for. For a motion that a Bill as reported on by the Select Committee be taken into consideration, no notice is prescribed by the Standing Orders. So, notice given on 30th January 1934 is perfectly valid for 1st February 1934."

MR. SAMI VENKATACHALAM CHETTI:—"What about Legislative Council Instruction No. 77 (1) on page 31?"

* The hon. the PRESIDENT:—"That is exactly what I was going to refer to. Instruction No. 77 (1) is the same as Standing Order No. 43 and it is applicable only to cases where copies of Bills have not been made available to the Members. I hope the hon. Member will read the Standing Order and the Instructions again for his own satisfaction."

MR. SAMI VENKATACHALAM CHETTI:—"I take it, Mr. President, that you have not made up your mind. If I may be permitted to speak, I should say, that I consider this procedure as a very serious encroachment upon the other business of the House. Otherwise, I have no motive whatever in raising this objection, especially to a Bill which does not affect any particular interest. The trouble is this. I take it

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that you admit, Mr. President, that this is the first time when such a difficulty has arisen. I hope the hon. the Leader of the House will give us his views in the matter. Now that the Advocate-General has just come into the House, may I repeat the arguments I advanced just now?"

* The hon. the PRESIDENT:—"The matter is so very clear that repetition is unnecessary. I hope the hon. Member will hear me through before he wants to say anything further on the subject."

Mr. SAMI VENKATACHALAM CHETTI:—"Provided you do not give a ruling at once."

* The hon. the PRESIDENT:—"I do not see why I should withhold my ruling once the point of order has been raised."

"The facts that on 25th January 1934 the Mover of the Bill had given notice of a similar motion and that on 30th January 1934 that motion could not be discussed as the Chair upheld an objection to its consideration on that day, do not operate as bars to this notice. Under Standing Order No. 7, the Secretary has to prepare a list of business for each day. He was therefore right in including and in fact he was bound to include Mr. Bhanoji Rao's motion for to-day. The motion has been duly put along with Bills and before resolutions in to-day's agenda. There was no consolidated list of business for all the three non-official days of this meeting and under Standing Order No. 7, there could be no such consolidated list. Owing to the operation of the rules as to notice, some of the items of business might be available for a later but not an earlier day and it is obvious that a consolidated list of business cannot be prepared for all the non-official days of a meeting, as the list could only be prepared with reference to the business available for the first day, and would exclude all other business which may be available for the subsequent days of a meeting. The only question is whether the Chair having upheld an objection to the consideration of the Bill on 30th January 1934 is now precluded from allowing such consideration to-day. As to this, I am quite clear that the Chair is not bound to disallow the motion to-day. I may add that though copies of the Bill were circulated by the Legislative Council office to hon. Members only on 19th January 1934, the Bill was published in the Gazette on 9th January 1934, and circulated to Members along with the gazette and copies were therefore available to Members for more than 15 days. I disallow the point of order raised by the hon. Member for the City of Madras."

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a.m.

* Mr. A. V. BHANOJI RAO:—"Sir, I beg to move—

'that the Bill, as amended by the Select Committee, be taken into consideration.'"

The RAJA OF KHALLIKOTE:—"I second it."

* Mr. T. C. SRINIVASA AYYANGAR:—"Mr. President, Sir, I move—

'that the Bill be recommitted to the same Select Committee for further report.'

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“ I desire to state at the outset that this motion is not made in any antagonistic spirit to the Bill but merely to see that suitable provisions are made which will meet the difficulties that inevitably arise from a composite Bill of this character. The original Impartible Estates Act, of which this Bill purports to be an amending Act, proceeds on a principle and policy which are somewhat in danger of being defeated in material particulars by this Bill. The original Act was the result of certain decisions of courts which gave a rude shock to the prevalent notion regarding inalienability of certain estates which were by custom impartible. Therefore after two temporary enactments, the permanent enactment, Act II of 1904, was placed on the statute book containing a schedule, the estates mentioned wherein were declared to be impartible for the purposes of that Act. The main point which will be obvious from that, is, that those estates were previously by custom impartible and were held by people for a long time to be also inalienable till certain decisions of courts. It was to restore in a sense and legalize the incidents understood to be existing before those decisions of courts, that that Act was passed.

“ The present Bill enlarges the scope of the original Act in certain directions. If this Bill becomes law, not only estates or fractions of estates which were previously by custom impartible at some time or another but also estates which were at no time impartible can come within the provisions of the Impartible Estates Act. Look at the definition which is introduced in this Bill. This definition is copied from Madras Act II of 1894, namely, the Proprietary Estates Village Service Act. That definition includes not only permanently settled estates but also permanent leases of villages from any of those estates and also inam villages. It is obvious that the introduction of such a definition will enable partible zamins and ordinary partible property to come within the scope of this Act. Is it the policy of the Government that any property and every property, whatever may be its legal incidents, can be made impartible and inalienable within the meaning of the Act?

“ The Bill deals with two subjects—exchange and alienation, alienation for the purpose of purchase with the proceeds of alienation. The case of exchange offers few difficulties legally. The property sought to be exchanged may assume the character of the impartible estate to which it would be tacked. The fraction of the impartible estate given away will cease to bear the characteristics of impartibility and inalienability. People having claim over the property exchanged may very well have the same remedies against the property which has taken the place of the one given away.

“ The case of alienation with a view to purchase property raises complications. An impartible estate has got certain legal incidents by custom and by law. They are not identical with the legal incidents attaching to an ordinary partible property. An ordinary partible property held by a family is subject not only to encumbrances specifically

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creating a charge thereon but also is subject to claims though unsecured in various ways. The members of the family have their rights of maintenance, unmarried girls should be maintained and the expenses of their marriage will have to be provided for. Even the credit of families is sustained by the possession of assets. Even simple creditors look to these properties as being the natural sources for satisfying their debts.

"In certain cases, if the holders of such properties sell away or alienate those properties under circumstances in which the creditors might be defeated or delayed, creditors have rights of action under the law by which the alienation can be set aside. In certain cases assignees in bankruptcy have got the means of avoiding these alienations within a limited time.

"The Bill provides that the Collector should certify that the alienation and acquisition are advantageous. The certificate, if it is to be valuable, should necessarily be the result of some investigation as to the propriety of the alienation and the advantage of acquiring the property in question. Where is the machinery and what are the provisions which are made in the Bill that would enable the Collector adequately to discharge this duty and grant the certificate? The certificate should be not merely that the alienation is advantageous but also that the acquisition is advantageous. Unless the Collector is satisfied that the property acquired is reasonably free from encumbrances and enforceable claims, how can such a certificate be given? A conclusive character is sought to be given to the certificate of the Collector. I should like the hon. the Revenue Member to enlighten the Council as to what the policy of the Government is generally in the matter of this Bill and what should be the range and extent of the investigation to be held by the Collector in the matter of this certificate. Unless careful provisions are made therefor, instead of the Bill being useful and advantageous to the zamindars, it is likely to be a fruitful source of difficulties and litigation. We cannot be sure that every aspect has been threshed out in the Select Committee. I don't mean any reflection on the Select Committee. I see that the characteristics of the property acquired would be altered. Therefore, I wish that the rights of the people who are likely to be involved, deserve further consideration in the Select Committee. I commend the proposition for the acceptance of the House."

MR. ABDUL HAMEED KHAN:—"Sir, I beg to second the motion. I think that the hon. Mover of the Bill will consider the various aspects of the matter put forward. As in the case of the other Bill, I think it is very necessary that some sort of agreement should be reached with regard to this Bill also. I hope therefore that the hon. Mover will agree to the recommitment of the Bill to the same Select Committee so that the various rights of the parties that will be affected may be considered over again by the Select Committee and the Bill may emerge from the Select Committee in a manner which will be acceptable to all the interests concerned."

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* Diwan Bahadur A. APPADURAI PILLAI:—"Sir, I oppose the motion brought forward by the hon. Member, Mr. Srinivasa Ayyangar, and seconded by Mr. Abdul Hameed Khan, to re-commit the Bill to the same Select Committee. The object of the Bill is explained in the Statement of Objects and Reasons—

'The advantages of this amendment are considerable to the big landholders, while it is in no way prejudicial to the interests of the ryots. Many of the estates of the bigger landholders are scattered and in these days when the administrative expenses are soaring up higher and higher, it is only right that they should, as far as possible, make their estates contiguous blocks and thus reduce the cost of administration. The spirit of the Impartible Estates Act, viz., to preserve the integrity of the ancient estates, is not violated in any way, but is, on the other hand, furthered by this amendment.

'As can be seen from the provisions of the amendment, sufficient safeguards are provided to prevent abuse of the powers conferred under it.'

"The landholders desire that they must be allowed to exchange small blocks of land in exchange for their own lands, in order that they may have a compact estate. Though there is no objection to this being done, there is at present no provision in the existing Impartible Estates Act. They cannot go now beyond the four walls of the present Act which prohibits not only alienation but also acquisition of fresh area. The Bill is advantageous to the landholders and is but necessary that this advantage should be conceded to them and its provisions in no way affect the interests of the ryots or the public.

"Further, the Bill contains only a few sections more or less of an enabling nature, to enable landholders to move in the right direction of consolidating their estates and removing the difficulties they are now labouring under. My hon. Friend, Mr. Srinivasa Ayyangar, referred to the fact that 'estate' as defined in the Bill is very comprehensive as it includes not only permanently settled estates, but also portions thereof, and particularly *inam* villages. I may remind the hon. Member that this definition is the one adopted in the Estates Land Act, and it has been borrowed from the Proprietary Estates Village Services Act II of 1894. The definition of 'estate' here refers only to section 4 of the Act, and clause 2 of the Bill definitely says:—

'For the purposes of clause (c) of sub-section (2) of section 4 and of sub-section (3) of section 4, "estate" etc.

"It would not alter in any way the character of the impartible estate, for this reason, Sir, that there is a schedule appended to the Impartible Estates Act; and it is stated there what estates are impartible and inalienable. A mere definition of the term 'estate' for the purposes of purchase or exchange as contemplated in the Bill would in no way alter the conditions of impartible estates or *inam* villages as such. This Bill, Sir, has been very carefully considered by the Select Committee and all possible objections that could be raised by the House or by the public have been fully taken into account. Care has also been taken, to make the Bill self-contained and to make it as simple as possible so as not to give room for any complaint on the part of the public or on the part of those interested in the

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proprietary estates. The Collector is the person who is intimately acquainted with the impartible estates in his own district. If an estate is situated in one or more districts, the Collectors of the districts concerned know the resources of the estates in their charge, how they are situated, whether they are better off or worse off in the matter of finance, administration, etc. If an estate is in a position to take in more land, the Collector will be the fittest person to know it. It was therefore thought by the Select Committee that the passing of the certificate by the Collector ought to be a sufficient guarantee of the bona fide of a proprietor's action. If anybody knows the actual condition of the impartible estate, it is the Collector, and I do not think any other authority could speak with an equal amount of authority as to the actual conditions of the estates. So, when the Collector gives the certificate, that should be enough. What is the transaction after all? The transaction refers to an exchange of a plot or the purchase of a plot. If the Collector certifies that the transaction can take place, there can be no objection or difficulty. The Bill also provides, Sir, that rules may be made by the Local Government to regulate 'the grant of certificates under the proviso to clause (c) of sub-section (2) of section 4 and generally for carrying out the purpose of the said clause.' The Local Government will naturally take care, in consultation with the hon. the Advocate-General to draw up a set of rules for the guidance of the Collector. Should the Collector refuse to give a certificate or should there be any difference of opinion, there is a higher authority, the Board of Revenue, to examine the Collector's orders and to pass such orders, as the case may require. I should think, Sir, that the interests of the landholders and the interests of the ryots in the estates and outside, are sufficiently safeguarded by the Bill. I do not therefore think that at this stage it is either desirable or necessary for a recommitment of this Bill to the Select Committee. I request my hon. Friend, the Mover of this motion, not to press it."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, as Mr. Srinivasa Ayyangar has explained, the object of this motion for a recommitment is to examine certain aspects of the Bill with a view to prevent any prejudice to the interests of the persons who are creditors of the owner of the property which is acquired either by exchange or by purchase . . ."

* Diwan Bahadur A. APPADURAI PILLAI:—"On a point of personal explanation, Mr. President. Such an amendment has been given notice of by my Friend, Mr. Muniswami Nayudu, and I suppose it will be considered in due course."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"I thank the hon. Member for the suggestion made; but we thought it would not be possible by this kind of amendment to deal with the question satisfactorily and that was why this motion for recommitment was given. If

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that question could be dealt with satisfactorily by any other suggestion that may be made by the Members on the other side, we are even now prepared to consider it. Our main difficulty is this: We do not object to the property being exchanged; we do not object to the new property when purchased being made impartible for all purposes under the Act; but what we are really concerned with is: if a person owns some property which is partible and if by reason of a certificate granted by the Collector, the property is purchased and is treated under this Bill as impartible, for all purposes, what becomes of the debts which were due by the owner of the property who has sold it, of the creditors who are entitled to proceed against that property? You will find, Sir, in the year 1904 when the Impartible Estates Act was passed, the position as decided by the Privy Council was that for the debts of the zamindar for the time being, whether they were charged debts or were personal debts, it was open to the creditor to proceed against the impartible estate and to bring the property to sale. The Act of 1904 took away from the date of its commencement, this power to bring the property to sale unless it be that the debt, whether it was secured or unsecured, was contracted for purposes laid down in the Act as being justifiable. So that whenever an application was made to recover the debts as against the owner of an estate, the question was whether the debt was justified and came within the four corners of Act II of 1904. If it did come within the four corners of the Act, of course the property was liable to be sold; if not, the creditor had to seek other remedies. When the Act of 1904 was passed, the legislature tried to provide for all those who had advanced loans to the owner of the estate for the time being, and all debts which were incurred before the passing of the Act, i.e., debts incurred before 1904, either secured or as a result of personal pro-notes were provided for, and in respect of those debts, you could proceed to sell the property even though those debts might not be justifiable under the Act of 1904. But if debts were incurred after the year 1904, then those debts had to be proved as justifiable debts. I want some such provision to be made in this Act. What we are now trying to do is to have a property which can be attached for personal debts converted into impartible property from the date this Act comes into force. What about the debts which have been incurred by the person whose property is going to be taken away like this and converted into an impartible estate? Can those debts be recovered as against the estate which becomes impartible in the ordinary method, by setting aside any part of the property as against those debts; or are you going to make those debts irrecoverable? If you do not make a provision now that on the date on which the estate becomes impartible if there are any debts incurred prior to that date, those debts will be recovered or paid up in a particular manner, there will be difficulty. You cannot proceed in respect of those debts and all that can be said is that you could take the money from the purchase money which the zamindar for the time being will pay to the person whose property is being acquired. There is absolutely no provision in the Bill as it has emerged

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from the Select Committee providing for such claims, personal claims, being safeguarded, as for instance, by saying that the money should not be handed over to the person who sells the property so that the present decree-holders may not be defrauded. We want some provision to be made that if a property becomes impartible by reason of this Act, all debts incurred by the person whose property is acquired shall be binding upon that estate even after the section comes into operation, or we should have a provision that when a sale is granted, the money which forms the consideration for the sale should be deposited with a certain officer, so that while the person who purchases the property gets a clear title to it, those who have claims, whether secured or unsecured, can proceed at least against the purchase money which is deposited. We have got similar provisions in the Land Acquisition Act where when a property is to be purchased the value thereof is held by the Collector as deposit, and subject to the decision of all those claims in a court of law, the money is held available with the Collector. That is why we have given amendments to the effect that wherever property which is purchased is sought to be converted into impartible property, it should be subject to the discharge of all liabilities or encumbrances which existed before the sale and also subject to the discharge of debts incurred personally by the owner of the property. Because we thought that it would not be possible on the floor of this House to have this particular amendment considered in all its aspects and because we could not know to what extent such an amendment would be acceptable to all the Members here, we wanted to go back to the Select Committee. We are not however anxious to go to the Select Committee; if the amendment that we have already given notice of will be discussed, at any rate by the Advocate-General, and if he will put it in a form which would take away all our misgivings, then there can be no difficulty whatever in adopting such a course. We only want on this side that a reasonable attitude should be taken by the Government. By all means purchase the property, make it impartible; but let the debts of the person whose property we are converting into impartible property be discharged either by the money being held up by the Collector and made available to the creditors or by the debts being made recoverable from the property although it becomes impartible."

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noon.

* Sriman M. G. PATNAIK Mahasayo:—"Mr. President, Sir, two questions arise in connexion with this. The first question is whether a partible property can be impressed with the character of impartibility. The second point that arises in this connexion is, whether the debts or other encumbrances binding upon the partible property, is to be discharged by the owner of the impartible estate when it is impressed with the character of impartibility . . ."

Diwan Bahadur A. APPADURAI PILLAI:—"On a point of order, Mr. President, I am sorry I have to interfere in this discussion. The first point is not now under discussion and when the amendment actually comes to be introduced it may be taken into consideration. It will

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then be time to decide that question of the hon. Member may propose suitable amendments."

* The hon. the PRESIDENT:—"Let the House hear him through."

* Sriman M. G. PATNAIK Mahasayo:—"Now, Sir, so far as the first question is concerned, it is covered by the authority of the Privy Council which has held that a partible property can be impressed by the acquirer of the property with the character of impartibility. Supposing an owner of an impartible estate purchases some partible property and impresses such property with the character of impartibility, it becomes impartible property.

"Then with regard to the second question, I should like to know whether the debts or any encumbrances subsisting on the property have to be discharged by the owner of the impartible property who impresses that property with impartibility. This has to be considered. There is a provision in the Act of 1904, section 7, which runs thus:

'This Act shall not affect all alienations made or debts incurred before the coming into force of this Act and shall cease to apply to estates or parts of estates which may hereafter . . .'

We are here concerned only with the first part. This provision will be sufficient to safeguard the interests of third parties who may have a claim against that property either as creditors or otherwise. This provision, I think, may not be sufficient to safeguard the interests of third parties who may have some claim against the partible estate which is subsequently impressed with the character of impartibility. Therefore, it is necessary that some suitable provision should be made to safeguard the interests of third parties and I think nobody would have any objection to making some suitable provision. Of course, my hon. Friend, Mr. Muniswami Nayudu, suggested that the provision laid down under the Land Acquisition Act may be followed in these cases also. That is a very circuitous course and I do not think it will be a suitable method to follow. Therefore, the best thing would be to make some provision either by an alteration of section 7 of the Act or otherwise so that the rights of third parties to proceed against properties may remain unaffected by the partible property being declared impartible. If such a thing is done, there cannot be any difficulty. If that can be done, there is no necessity for the Bill being recommitted to the Select Committee."

* The hon. Sir ARCHIBALD CAMPBELL:—"Mr. President, the Mover of this motion requested me to state what the Collector is expected to do under this Act. Sir, his responsibility is merely to protect the interests of the proprietor of the impartible estate and his heirs and he is not concerned with the civil rights of anybody else. That is all that the Collector is required to do. He will have to consider the question of the income likely to be derived from the portion of the estate which is to be purchased or received in exchange for the impartible estate or the portion which is to be alienated and he may also take into consideration such questions as convenience for purposes of administration. For example, if a zamindar in the Kistna district has as part of his

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estate some villages in the Tinnevely district, it may be advantageous to him to get rid of all those villages in the Tinnevely district in exchange for some villages in the Kistna district by means of a three-corner arrangement or direct exchange if that would be more convenient from the point of view of administration, although the villages in the Kistna district may not bring him quite as much income as the villages in the Tinnevely district; yet the change will serve the purpose of administrative convenience as he will be in much closer touch with his tenants. Those are the points which the Collector has to consider. I would resist any attempt to make the Collector go into questions which ought properly to be dealt with by civil courts and I shall also resist any attempt to make the Collector receive sale money, as he has nothing whatever to do with that. The only thing he is concerned with is to protect the interests of holders of impartible estates and their heirs.

"Now, Sir, as regards the main question raised, I understand that we may divide the debts into two classes—secured and unsecured—and when we are making certain villages form part of an impartible estate, secured debts will not be affected in any way and they will continue to be secured. But, as regards the unsecured debts of the person who formerly owned the estate which would now become an impartible estate, that owner will receive land in exchange for the land which he is losing, the unsecured debts will presumably become a liability on that land instead of on the land alienated to the proprietor of the impartible estate. The effect of that sale is a matter for the civil courts to decide under the civil law and it will be open to any debtor to apply for an injunction to stop the exchange even though the Collector has given a certificate. The certificate does not over-ride any powers of the civil court. The Bill does not provide that the transaction must be carried out if the certificate is issued but only that the transaction cannot be carried out without the certificate. The grant of this certificate will not affect the rights of anybody else. The question is largely a matter of interpretation of law I think, before a vote is taken on this question, probably the House would like to hear the Advocate-General."

* Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"Mr. President, to appreciate the points in controversy, it is necessary to keep distinct two classes of cases. One case is where an impartible estate is exchanged for an impartible estate. If it is a case of an exchange of one impartible estate for another impartible estate, it is merely a case of substitution and there is no difficulty whatever. If the property is already subject to any encumbrance, that encumbrance cannot be got rid of by any kind of exchange. If, on the other hand, it is a simple debt, that would under normal circumstances be binding on the new impartible estate that has been acquired in place of the old if the debt is of such a character as would be binding on the managing member of an undivided family. If, on the other hand, under the law, the debt is such as will not be binding upon the impartible estate, neither the old estate nor the new estate will be

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liable to that debt. To this extent, there is absolutely no change in the law, as it is merely a substitution of one kind of impartible estate for another kind of impartible estate. That is one case.

"Then the second question is what is the law if partible property is exchanged for impartible property. This Bill does not in any way affect the Hindu Law in regard to partible property. Merely because an impartible estate holder has obtained by way of exchange a partible property and impressed upon it the character of impartibility, the obligations under the ordinary law of partible property will not change. To-day, in the case of partible property, if a person alienates property the debts are not binding upon the alienee, unless it be the alienation is in fraud of the creditors. If in a particular case it is proved that the alienation of the partible property for the impartible property is in fraud of the creditors, under the ordinary law, it will be bad. If no fraud is proved, it stands in the same position as in the case of any other alienation of partible property by any partible owner. Supposing the alienation is made by a partible proprietor not with a view to defraud or delay creditors, the creditors cannot proceed against the property in the hands of the alienee, but can only proceed against the alienor. The same law will apply to transactions of the kind dealt with. The Bill leaves untouched the obligations and liabilities that arise out of an alienation of partible property and it does not in any way affect the right of family members to impeach the alienation of partible property if the alienation is in excess say of the powers of a manager or the powers of a father. (Mr. T. C. Srinivasa Ayyangar: What about unsecured debts?) I am not arguing before a court of law and even before a court of law the Judge gives me some time before I answer. Now, so far as the unsecured creditors are concerned, what I have already stated is elementary law. There is nothing to prevent a person alienating property simply because he has unsecured debts. The alienation will be bad only if the alienation is with a view to defraud or delay creditors. That law is left untouched by the provisions of the present Bill. That is my answer with regard to the position of unsecured creditors. You cannot in a Bill dealing with an amendment to an Impartible Estates Act, deal with the rights and obligations *inter se* of the partible family and their creditors. Such a provision will be out of place in an amendment to the Impartible Estates Act. The present Bill merely clothes the impartible estate holder with certain powers of alienation in excess of the powers which he possesses under the present Act. That is why provision is made in the rules to see that in a transaction for exchange, the Collector should satisfy himself that it is a *bona fide* transaction, that the parties mean real business and that the transaction is concluded satisfactorily. It will be difficult to provide for all that in an enactment. That is the general scheme of the Bill. The Bill does not in any way affect the rules of Hindu Law. For example, an impartible estate-holder can purchase property and impress upon that property the character of an impartible estate property. That is under the common law of India. Under the Hindu Law, there is

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nothing to prevent an impartible estate-holder from purchasing property and impressing upon it the character of impartibility. Does it mean that since the impartible estate-holder impresses upon the property the character of impartibility, the members of the partible family are in any way affected? They have every right to impeach an alienation where the circumstances warrant an attack on the alienation whether an impartible estate-holder seeks to make it impartible or does not make it impartible. The two positions are quite distinct. That, I think, is the scheme of the Bill."

Mr. T. SUNDARA RAO NAYUDU:—"I move that the question be now put."

* Mr. T. C. SRINIVASA AYYANGAR:—"Mr. President, after the exposition of the principles underlying the Bill both by the hon. the Revenue Member and the hon. the Advocate-General, one is tempted to think that it is absolutely a futile Bill. Up to now owners of impartible estates enjoyed, by virtue of a public policy, a certain amount of safety and permanency, ever since 1902 and certainly from 1904. Under this Bill which was conceived in the interests of such owners those estates which were assured permanency of property have been left to the tender mercies of all the laws that will affect the ordinary property, which is partible, alienable, attachable, saleable, etc. Surely, this Bill will be found later on to be a danger rather than an advantage to the impartible estate-holders.

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"But, however, I am not pleading for the zamindars; and I will leave the matter there. It is entirely a matter for the consideration of my hon. Friend, Mr. Bhanaji Rao.

"The hon. the Advocate-General with the lucidity so characteristic of him has given us an exposition of the general principles of law relating to partible properties. The hon. the Revenue Member has taken care to state that the Collectors shall not be dragged into deciding or dealing with any subject that would properly be the function and be a matter of decision by civil courts. The hon. the Revenue Member was anxious to safeguard the position of the Collectors leaving parties who have rights to resort to the appropriate tribunals. The Collector's certificate would therefore be merely one which enables the owner of the impartible estate to alienate the property and a conclusive character would really appertain to that aspect of that matter. But, the language in the Bill means more than what the hon. the Revenue Member intends. The certificate should be that not only the alienation but also the acquisition should be advantageous to the estates. How can there be any advantage when there is no sort of enquiry into the nature of the property and the claims thereon? Whatever may be the opinions expressed here whether by the hon. the Revenue Member or even by the Advocate-General, they will not be binding upon the courts of law who will only construe the expressions that are given in the enactment. The hon. the Advocate-General's speech makes the matter clear in one respect, namely, that no rights possessed by any person on the property that would be acquired either by exchange or by purchase by the owner

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of the impartible estate would be affected. Trying to visualize the position that emerges after the speeches of hon. Members, it comes to this: The certificate of the Collector would give finality to the alienation of the impartible estate or a fraction of it. The acquisition with the proceeds thereof may not be free from any encumbrances or charges or other enforceable claims against the property so acquired. By the operation of the existing Impartible Estates Act, one can very well presume that the impartible estates, since at least 1904, are free from speculative litigation; and their titles are safe. But, in its place, the property that may be acquired may not be as free and unencumbered as the one that is alienated. Possibly, the property acquired may become the subject-matter of litigation. Is it the benefit that the Bill seeks to confer or the result contemplated? Surely not. I believe, the object of the promoters of the Bill is to add to the advantages, convenience and security of the property. If so, there are not adequate provisions in the Bill.

“My hon. Friend, Mr. Appadurai Pillai, contemplates great benefits to the ryots by the provisions of the Bill. I don't see how those hopes are justified. He thinks that there is something very profound in the definition of estates contained in Madras Act II of 1894. Let it be so. But, what is its place in an Impartible Estates Act? Till now, impartible estates consisted of only one kind of property, with incidents well-known to that class of property. But, by virtue of this Bill and the incorporation in this Bill of the definition of estates contained in Act II of 1894, a great change is effected. An impartible estate may now consist of many varieties of property with distinct sets of incidents. I can give an example. Take the case of an estate, a big estate, with a set of inam villages on one side of it and certain lease-hold villages on another side. The zamindar thinks it would be advantageous to him if he gives away a few villages of his zamindari in exchange for the inam villages on the one side and the lease-hold villages on the other side. If these exchanges or acquisitions are accomplished, the erstwhile, homogeneous, impartible estate will now consist of three distinct types of property within one estate. The balance of the original estate would pay peshkash to Government, the inam villages would pay quit-rent to Government and porupu or jodi to some other zamindar, the lease-hold villages will pay lease amounts to another proprietor with no direct payment whatsoever to Government in the shape of peshkash or quit-rent. The lease-hold villages may perhaps be liable, in case of default, for payment of revenue to the Government by the other zamindars to whom porupu is payable. Is this a contingency contemplated by this Bill?

“There is yet another matter. The Advocate-General was thinking only of cases of fraud in alienations when he mentioned that unsecured creditors have no claim against properties in the hands of alienees. Is there no case whatsoever wherein claims not secured expressly upon properties have no remedies against them?”

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Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"If my Friend is right in that statement, that will continue to be the law even with this amendment. Whatever might be the rights those rights and obligations are left untouched by the provision of the amending Bill."

* Mr. T. C. SRINIVASA AYYANGAR:—"I am very much obliged to the Advocate-General. A simple statement requires many explanations. Is that the way in which we must present an enactment? Should not legislation set at rest all difficulties? We do not want to create a seed-bed of litigation and difficulties. There is a border land always for alienation and denial. Apart from creditors, there is a class of people who naturally and legitimately depend for their maintenance on various partible property. Should not some provision be made? Should not some provision be made regarding the rights of people which have to be duly safeguarded? I think the Bill requires further consideration for all these things. On the other hand, doubts and difficulties may be set at rest and considerations which are legitimately pertaining to the Bill may all be reconsidered by the Select Committee who may send a further report."

The amendment was put and lost.

The main motion that the Bill, as amended by the Select Committee, be taken into consideration, was put and carried.

Clause 1.

* The hon. Sir ARCHIBALD CAMPBELL:—"I do not wish to move my amendments," Sir. I gave notice of this motion when it was anticipated that Mr. Patnaik's Bill would come on. Now, it seems better to postpone this to the third reading if there is no objection."

Clause 1 was put and carried.

Clause 2.

* The hon. Sir ARCHIBALD CAMPBELL:—"I beg to move—

'In the new paragraph added by this clause—

(i) *in line 2, for "section 4" in the second place where it occurs "that section," shall be substituted; and*

(ii) *at the end of clause (4), the word "or" shall be inserted.'*

These are purely verbal amendments."

The hon. the RAJA OF BOBBILI:—"I second it."

The amendment was put and carried.

Clause 2, as amended, was put and carried.

^a Clause 1.

The hon. Sir ARCHIBALD CAMPBELL:—

For the short title 'the Madras Impartible Estates (Amendment) Act, 1934,' substitute 'the Madras Impartible Estates (Second Amendment) Act, 1934.'

N.B.—This amendment will become necessary only if Mr. Patnaik's Bill—Bill No. 11 of 1932—is passed first.

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Clause 3.

* The hon. Sir ARCHIBALD CAMPBELL:—" Mr. President, Sir, I beg to move the following amendments:—

- (i) "alienate," "alienation" and "alienated" wherever the words occur shall be changed into "sell," "sale" and "sold" respectively.
- (ii) (a) In the proviso to clause (c) of sub-clause (1) in line 3 at page 4, the words "or estates" shall be omitted.
 (b) In lines 14 and 15 at page 4, for the word and figure "section 9," the word and figure "sub-section (4)." shall be substituted.
 (c) In the last line, the word "said" shall be omitted.
- (iii) At the end of sub-clause (1), the word "and" shall be inserted.
- (iv) Sub-clause (2) shall be recast as follows:—
 " (2) Sub-section (3) shall be renumbered (5) and the following shall be inserted as sub-sections (3) and (4), namely:—
 ' (3) The estate or estates or part or parts of an estate or estates obtained in exchange for or acquired with the proceeds of the sale of an impartible estate or any part or parts thereof under clause (c) of sub-section (2) shall, for all the purposes of this Act, be deemed to be an impartible estate or to form part or parts of the impartible estate, as the case may be.
 (4) The Local Government may make rules for regulating the grant of certificates under the proviso to clause (c) of sub-section (2) and generally for carrying out the purposes of the said clause '."

"The object of the first amendment is to make it clear that the only alienation contemplated in this clause is by sale. The Select Committee makes it clear in its report that only exchange or sale of part or parts of an estate is contemplated. It is advisable therefore to use the word 'sale' instead of the wider term 'alienation,' which might cover a mortgage.

"The second amendment is to omit the words 'or estates' in the proviso of clause (c) of sub-clause (1). These words are unnecessary because the earlier and the later portions of the proviso refer only to one impartible estate. In this same amendment I propose to delete the word 'said' which is unnecessary. My third amendment, namely, the insertion of the word 'and' is a purely verbal amendment. The fourth one proposes to recast sub-clause (2). Clause 4 of the present Bill purports to add new section 9 to the Madras Impartible Estates Act; but the Bill of Mr. Patnaik, namely, Bill No. 11 of 1932, also proposes to insert new section 9. It will therefore be better to combine clause 4 of this Bill with

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sub-caluse (2) of clause 3 as proposed in this amendment. There is one verbal alteration. I propose the omission of the words 'of section 4' as they will be unnecessary."

The hon. the RAJA OF BOBBILI:—"I second it."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"May I suggest that items (i), (ii) and (iii) of this amendment may be put to vote separately from item (iv)?"

* The hon. the PRESIDENT:—"As suggested, I will put items (i), (ii) and (iii) of this amendment first."

The amendment exclusive of item (iv) was then put and carried.

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Mr. President, to sub-section (3) as amended, I move the amendment standing in my name, namely, in the proposed sub-section (3), add at the end the following:—

'Provided that the estate so obtained or acquired shall be subject to all encumbrances subsisting thereon and be liable for all debts or claims enforceable against the owners from whom the estate was obtained or acquired on the date when it is so obtained or acquired.'

"I tried to explain the object of this to the Select Committee and also pointed out its relevancy to section 7 of the original Act of 1904. I hope, Sir, the hon. the Advocate-General would try to realize our difficulties and meet the same. On the other hand, with all the legal acumen at his command he simply brushes aside our objections by saying that it is now open to a party to alienate the property and that no unsecured creditor can have any claim on it and there is no necessity to make any provision. I should be glad if that was the attitude of the framers of the Act of 1904. You will see that what section 7 of that Act provides is where an estate was made impartible or inalienable, etc. What they did remove by that Act was the power to alienate. They put under certain restraint the power to alienate. Therefore the word 'impartible' was not appropriate. They took away the right to unrestricted alienation of the estate owner. While taking away that right they said that the right of alienation would inure for the benefit of those who had already advanced moneys to him and in whose favour either there was alienation existing or there was a debt existing. When this power was tried to be restricted, section 7 provided for that restriction not to operate in the case of alienations already made and in the case of debts which were purely personal. The object really was that all personal debts of the holder for the time being which were incurred before the passing of the Impartible Estates Act of 1904, should be considered to be, for the purpose of realization, as debts which could be proceeded against the estate in spite of the fact that from the date of the passing of that Act they were subject to restriction with regard to alienation. With regard to the debts incurred before the estate was declared impartible the property will be proceeded against as if the land was alienable. As regards debts incurred subsequently, liability existed only if the debts are justified. What I

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suggest is this: that as in 1904 even in respect of the estates where the power of alienation was curtailed, they provided for recourse against that property without any question whether the debt was legitimately incurred or not, I say that whatever property might be impressed with the character of impartibility under this Act, that could be curtailed by making available that property for the purpose of debts already incurred by the owner. The position is this: Evidently the hon. the Advocate-General has overlooked the provision in clause 4. The Collector says, he can purchase the property. The next section says: The estate or estates obtained in exchange or acquired with the proceeds of the sale of an impartible estate shall be deemed to be part of the impartible estate for all the purposes of this Act. The words 'obtained or acquired' would only mean this: If a sale transaction is there, you complete the transaction by taking a sale-deed. As soon as the sale-deed is taken, it becomes a completed transaction and the result is that thereafter that property could not be proceeded against in accordance with the law except under section 4 of the original Act. Section 4 says: The proprietor of an estate shall be incapable of alienating such estate or any part of it beyond his own life unless the alienation was made under justifiable circumstances. The result is that under section 3, on the date of the sale-deed the property becomes impartible. Thereafter the property could be alienated either by the landlord who was then owner or by the court at the instance of somebody under clause 4 only. It cannot be claimed by the original debtor that it was not impartible. If he makes that claim it could be met by the plea that by the sale itself it has become impartible property and that therefore all the provisions of the Act come into force. If in the plenitude of his power the hon. the Advocate-General should say that my interpretation is wrong, I will accept it. But that would not be binding on the courts. Anyway, we on this side of the House are entitled to put forth our views and if we are assured that our apprehensions are unfounded, nobody would be gladder. We submit, however, that if in 1904 in spite of the provisions made in the Impartible Estates Act, they found it necessary to make an exception in section 7, we do not see how the Advocate-General thinks that in 1934 such a provision is unnecessary in connexion with Acts declaring certain estates impartible for the first time. If reasons are forthcoming we can accept them. We cannot merely rely on the opinion of the Advocate-General. The matter must be cleared beyond all doubt. I therefore suggest that we should here make a provision similar to that made in section 7 of the original Act of 1904."

Mr. P. V. KRISHNAYYA CHOUDARI:—"I second the amendment."

* The hon. Sir ARCHIBALD CAMPBELL:—"Mr. President, Sir, If I oppose this motion it is not with any intention of affecting the rights of any person. But this question was discussed in the Select Committee and we considered that any provision of this nature was unnecessary as the Bill now before the House will not affect the rights of third parties. I will leave the legal aspect of the case to be dealt with by the hon. the Advocate-General, making only one point myself. All that we propose to do by this Bill is to declare certain lands in certain circumstances to be

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an impartible estate or a part thereof. I would like to remind hon. Members of this House that this legislature has on several occasions in the past few years declared some estates to be impartible and have not adopted any proviso in the terms now suggested in connexion therewith."

* Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"Mr. President, in the speech of the hon. Member, Mr. Muniswami Nayudu, there is a certain amount of misapprehension. The position of partible property which is the subject of exchange or sale is not the same as the position of an impartible estate which comes within the provisions of the Impartible Estates Act. As hon. Members are well aware, prior to the Impartible Estates Act, the estate owner was the absolute owner of his property, and every kind of alienation, be it for necessary purpose or be it not, was binding upon the holder of the estate and his successors in title. The object of the Impartible Estates Act was to put a restriction upon the powers of the holder for the time being. It was felt that it was not right that you should so affect the incidents of the Impartible Estates Act by the statute for the first time as to interfere with the rights of antecedent creditors, creditors prior to the passing of the Madras Impartible Estates Act. Therefore the Act readily provided that if there is a debt or an obligation which would, but for the passing of the Act, be binding upon the impartible estateholder, it must continue to be binding even after the passing of the Impartible Estates Act. That provision furnishes no analogy to the case under consideration. There was no complication of a partible estate with an impartible estate in that case. I have already pointed out with regard to the first motion, it leaves untouched the rights and obligations of the partible family. There is no provision in the Act which gives a statutory validity to the alienations made by the members of the partible family. They stand where they are. If their alienation is invalid or affected with an infirmity, even after the passing of this Bill, that alienation continues to be affected with that invalidity or infirmity, notwithstanding the fact that the owner who has bought it or got it by exchange is a member of the impartible estate and thus it is impartible by virtue of the provisions of the Act. It is not impartible as against the whole world; it is impartible only in the hands of this particular family. In every other case, suppose to-morrow, this very property is parted to a stranger for purposes of a necessity, in the hands of that family, this property will not be impartible. Therefore the impartible character is inextricably mixed up with the family in whose hands the property for the time being vests. Under these circumstances, I do not see any resemblance whatsoever between the provisions of section 7 of the original Impartible Estates Act and the attempt to safeguard the rights of creditors of the partible family. If that is the intention, then that will be a novel provision. Now what we are doing is to introduce a provision by way of amendment in the Impartible Estates Act, by which we are enlarging the powers of the impartible holder. By this he is in a position to enter into certain transactions, which he was not competent before. The property in his hands is impressed with all the incidents of impartibility. So far as third parties

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are concerned, the Bill does not in any way interfere with their rights. My hon. Friend, in another context, said: 'Oh, why should we have a Bill of that character which does not interfere with the rights of the partible family?' He must understand that at the same time we have not given a *carte blanche* to the members of the partible family. The rights and obligations of the partible family continue to be where they are at present. Thus what is aimed at by this amendment is to impart to the holder of the impartible estate the character of impartibility of a particular property so long as it is in his power; the moment that particular property passes away from his hands, it loses the character of impartibility. Thus the Bill does not aim at the rights of third parties at all. That is the short answer to the argument advanced by the party opposite."

* MR. K. R. VENKATARAMA AYYAR:—"Mr. President, Sir, I have been following the course of discussion in regard to this matter. I feel that except for a certain amount of confusion imported perhaps by those who are responsible for this amendment, it would be quite unnecessary to take up the time of the House with this amendment. The present Bill is not one which is intended or calculated to affect the rights of property or the rights of members of families from whom acquisitions are made by owners of impartible estates. This Bill has become a necessity, because under section 4 of the Impartible Estates Act, as it now stands, certain exchanges or sales which may be administratively necessary or convenient stand forbidden. In order to secure to the holders of impartible estates, as they stand at present in the present Act, this further latitude in the matter of exchanges and sales, this amending Bill has become necessary. And in order that the policy underlying the original Impartible Estates Act might not stand frustrated, care has been taken on the present occasion to maintain that policy by making the new latitude that is provided for the holder of the impartible estate dependant on the issue of a certificate by the executive official head of the district where the impartible estate is situated. That is all that is necessary in a matter of this kind consistently with the requirement that the policy of the original Act of 1904 be maintained. The holders of partible properties or portions thereof, from whom acquisitions are made by holders of impartible estates under the powers now claimed under this Bill, they are not constrained to give their consent to any compulsory acquisition from them. This Bill does not make it incumbent upon the holder of a partible property to part with it because it is to the advantage of the holder of the impartible estate to acquire a slice of the property of the partible holder. The liberty of refusing to part with his property enures in the head of a partible family, even if this Bill becomes law, as much as it existed before. Similarly the right of an impartible estate holder, from whom the acquisition is sought to be made, also continues intact. This Bill is not in the nature of compulsory land acquisition. If it were a compulsory acquisition as under the Land Acquisition Act, there might be some justification for introducing in this Bill also, other clauses, which might be felt to be necessary for the purpose of safeguarding the interests of those who would be interested in the property, which is compulsorily

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acquired from them. But this is not of such a character at all. This is only an enabling Bill, which permits the holder of an impartible estate, who is under the restraint imposed by section 4 of the original Act, to embark upon an exchange or sale of a part of his impartible estate, subject to the safeguard of his obtaining a certificate from the Collector, that it is a transaction necessary or beneficial. So far as the rights of the impartible estate-holder, from whom a slice is purported to be got by way of exchange or sale, or so far as the rights of the head of the family owning partible property, from whom a part of that property is sought to be purchased, are concerned, they are not at all affected by this Bill to any extent or in any manner. Their powers of disposing by way of exchange or sale in respect of properties would remain exactly as they were before, even if this Bill becomes law. If they could not part with their property before this Bill, they cannot part with it even after this Bill. To any infringement of their right persons interested can get an interdict from the judicial courts, and this same interdict they can obtain even after the passing of this Bill. Not only that, even if those who are entitled to have an interdict by a reference to law courts, did not take any anticipatory proceedings and get an injunction and so the transaction went through, and only afterwards they woke up and subsequently started proceedings questioning the validity of the transactions, in so far as the rights of these persons are affected, those proceedings again would stand absolutely safe and unaffected by this Bill. In fact it would be entirely foreign to the scope of this Bill for anybody to suggest that provisions should be introduced in this Bill, which would be either declaratory of the rights of members of the family from whom acquisitions are sought to be made, or which would safeguard those rights. Therefore it is absolutely foreign to this Bill to introduce provisions relating to the position and rights of third parties. Similarly with reference to creditors to whom debts are owing from a partible family or other family from whom the property is being acquired, if they are secured creditors, their security remains good, and the security will equally be available in the hands of the impartible holder who acquires that property by way of exchange or sale. If there are unsecured creditors, they will have all the other properties of the family to proceed against and even those newly acquired by sale or exchange. Thus the rights as between the creditor and the debtor remain unaffected.

“ It appears to me that the whole argument underlying this amendment is founded upon the supposition that somebody is compulsorily acquiring, as though by force of this statute. As this Bill is not in the nature of such a land acquisition, but only provides for a purely voluntary sale or exchange there is no necessity at all to bring into this Bill any such amendment as is moved by my hon. Friend, Mr. Muniswami Nayudu. I think you cannot really introduce this amendment with any relevancy or logic.”

1 p.m. * Rao Bahadur Sir A. P. PATRO:—“ Sir, the hon. Member from Madura concluded by saying that logic or reason would not justify the introduction of such an amendment. I am sure hon. Members will agree

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with me when I say that logic or reason would demand that he (the hon. Member from Madura) should not have spoken on this amendment for the reason that he spoke nothing. All the time he has devoted to dealing with a matter which is not the subject-matter before this House. The amendment of the hon. Member from Chittoor raised a reasonable apprehension. It was also raised by me in the Select Committee. The matter was fully considered and in consultation with the Advocate-General we decided that there was no room for any such apprehension. The apprehension raised in this amendment by the hon. Member from Chittoor is with reference to a partible property exchanged for an impartible property. The hon. the Advocate-General in his very lucid statement explained that the property that is acquired either by sale or exchange will be subject to the same incidents as before and the interests of those having interest in the property will not be jeopardized. If interest has accrued in the property, even after exchange such rights will not be interfered with. That is of course the answer to the apprehension raised in the amendment of my hon. Friend from Chittoor. I am sure the hon. Member from Chittoor is perfectly satisfied with the explanation given by the learned Advocate-General, and it passes my understanding as to what the hon. Member from Madura is speaking upon. Generally hair splitting is attributed to certain classes of lawyers. Here it is not even hair splitting. The hon. Member was talking quite outside the subject or the scope of the amendment. The amendment is a very simple one in that it wanted that the rights and liabilities accrued before the exchange of the property should not be interfered with. Now after hearing the learned Advocate-General, I hope the hon. Member from Chittoor will not press his amendment."

Mr. R. MADANAGOPAL NAYUDU :—" I move that the question be now put."

* Diwan Bahadur B. MUNISWAMI NAYUDU :—" Sir, although I am sure that my amendment will not be carried through yet I want just to say this much: It is not merely enough for the Government to say ' We have got a majority and so we oppose this amendment.' Sir, so far as this portion of the Bill is concerned, if there is some mistake and confusion on my part, I think there is equally some confusion on the part of the other side also. The Impartible Estates Act can be more appropriately called the Inalienable Estates Act. We do not find anywhere in the Impartible Estates Act that it is not partible. There is not a single provision there which states that it is not partible. On the other hand it provides for the safety of the estate. It tries to curtail the power of alienation. What I say is, when you are providing for impartibility and inalienability to certain estates to-day you must also provide for the safeguarding of such rights and liabilities which accrued upon those estates prior to the passing of this Act. I have nothing more to say."

The amendment was put and lost.

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Clause 3, sub-clause (2).

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"I beg to move that in the amendment of the hon. the Revenue Member the following amendment may be made and with your permission the words 'referred to in sub-section (3) above' in sub-clause (2) may be omitted and the words 'due by the owner of the estate which is acquired or obtained' may be substituted and also the first part of sub-clause (3) in the hon. the Revenue Member's amendment may be omitted:—

"The amendment of the hon. the Revenue Member with my proposed amendment will read thus—

'(4) *The Local Government may make rules—*

- "(1) *for regulating the grant of certificates under the proviso to clause (c) of sub-section (2), for giving due publicity of the proposals to all persons interested inviting them to prefer objections, if any, and for enquiry of the same;*
- (2) *for ensuring the due discharge of encumbrances, debts and claims due by the owner of the estate which is acquired or obtained;*
- (3) *and generally for carrying out the purposes of the said clause."*

"Sir, the stand taken by the hon. the Advocate-General is that if a person is entitled to sell his property, just as in the case of those who have got private debts their property is liable for all debts, here also the property is liable for all debts and encumbrances. All that I want to point out is that my request that if people want to proceed against this estate, they must be allowed to do so has been negatived on the ground that even otherwise their right is still there. I only request that there may be a reasonable chance given to persons who may have claims on the estate by way of private debts. They should be able to know whether the property is going to be transferred so that they may intervene if they like to intervene and claim their debts or obtain an order to see that their debts are satisfied. The object of my amendment is that the Government should provide for due protection of all parties concerned and they must also see that before the Collector grants the certificate he must be satisfied with the bona fides of the transaction, not merely from the point of view of the estate owners but also from the point of view of those who are affected by it, and that he should satisfy himself that from the money that is going to be paid to the estate owner all the debts and liabilities will be paid. I therefore move that this amendment may be accepted."

* Sriman M. G. PATNAIK Mahasayo:—"Sir, in spite of the opinion of the learned Advocate-General that the rights of the third parties will not be affected, we clearly say they will be affected, because section 7 does not apply to the case before the House. All that is stated in the Act of 1904 is that all claims accrued up to the date of the passing of that Act shall be met from the estate. But subsequently several estates

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have been impressed with the character of impartibility and any rights or interests that have accrued upon those estates should be safeguarded. Therefore, it is necessary that notice should be given to those who have got a claim upon such estates. Of course this is a small amendment and it should not be objected to by the other side."

* Mr. T. C. SRINIVASA AYYANGAR:—"Sir, I support the amendment not only from the point of view of those whose interests are said to be affected but also from the point of view of those who have got a claim on the estate by way of maintenance, and so on. Even in the interests of the impartible estate holders themselves who acquire these properties, it is absolutely essential that due publicity should be given and objections should be invited from those who are affected. I remember what the hon. the Revenue Member said was that the Collector's functions in this matter will not be in any way encroached upon by the duties of the civil court. Nor will he interfere with claims that are put forward and which involve civil rights. It will be merely his function when a property is acquired to impress it with the new character which is different from the one which previously appertained to it. If that is the intention of the hon. the Revenue Member, it is quite essential that due publicity should be given so that persons interested who have got a claim may put forward their claims. It would also be in the interests of the estate holders if they were to know finally the amount of claims that was being made upon their estates. When the estate is exchanged, it would be the proper occasion to give due publicity to it and if this is done it would also avoid much litigation."

* The hon. Sir ARCHIBALD CAMPBELL:—"I am afraid I must oppose this amendment. I have already explained to-day that the functions of the Collector should be confined simply to see that the interests of the proprietor of the impartible estate and his heirs are properly safeguarded and that it is not his business to carry out any duties which normally devolve on civil courts. Nor can I agree to laying upon the Collector any responsibility for ensuring the due discharge of encumbrances, debts and claims made upon the estate which is to be acquired. That seems to me to be the function of the civil courts, and we should not throw these duties upon the Collector. I have no objection to include in the rules a provision to ensure that due publicity is given to the proposed transaction, but I should object to the words 'all persons interested' being inserted in the statute itself. That would again throw a heavy responsibility upon the Collector. I should have no objection to include some provision in the rules whereby proposals of this character should be published in the district gazette. But I am not prepared to include in this section any specific provision on that point that will be inconsistent with the procedure which we should have to lay down for the Collector to follow. I oppose the amendment."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, I am not surprised at the attitude of the hon. the Revenue Member. Though this is a non-official Bill, this is really a Government Bill as the Government want to take all the powers directly or indirectly as in the case

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of a Government Bill. The hon. the Revenue Member said that all that the Government wanted to see was, that so far as the Collector was concerned, he had only to ascertain whether the sale was advantageous to the estate or not. I ask, Sir, how is the Collector to ascertain whether the sale is advantageous or not? The Collector receives an application from a landholder, let us suppose. He sits in a room and simply publishes a notification to the effect that he is going to give his sanction to the application. He does not invite any objections, nor does he consider them. The hon. the Revenue Member thinks that the Collector should not be troubled with the work of inviting objections and considering them. Then, is he merely to grant an application after mere publication in the gazette? Is that what the hon. the Revenue Member wants the Collector to do? I think, Sir, the Collector is as much the custodian of the rights and interests of the people who may be affected by his granting the application as the custodian of the rights and interests of the estate. For instance, there may be an objection from somebody that the proposed acquisition is not advantageous to the estate. In such a case, how is the Collector going to ascertain whether it would be advantageous to grant the application or not? "

* The hon. Sir ARCHIBALD CAMPBELL:—"I did not mean to say that the Collector should not listen to objections, but I objected to the provision that the Collector is bound to give notice to all persons interested in the estate such as the alleged creditors and others. Of course, the Collector will listen to any objections raised."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"I do not want that the Collector should find out X, Y and Z who are interested in the estate. All that I want is that the Collector should publish the notification in the gazette and invite objections from persons interested, in whatever manner it may be, in the acquisition. The hon. the Revenue Member says that he has no objection to the provision asking the Collector to invite objections and consider them before he grants the application. In that case, I do not see any real objection to the amendment as it stands. It only speaks of giving due publicity to the proposals to all persons interested inviting them to prefer objections, if any, and enquiring into the same. If he objects to the latter portion of the amendment—enquiry into the same—there is no meaning in giving publicity to the proposals and inviting objections if an enquiry is not held and the objections considered. If objections are invited, it must be with a view to enquire into the same. There is no meaning in inviting objections and granting the application without considering the objections. I submit, Sir, that the attitude of the hon. the Revenue Member is hardly one that is conducive to inspire a certain amount of faith in the Government, faith that they are acting not merely in the interests of persons who may have large estates but also of persons who may be interested in the estates in other ways. There is the other part of the amendment, namely, 'for ensuring the due discharge of encumbrances, debts and claims.' With regard to that, I think, from the debate that has taken place here, if the Government are mindful of their duties, they must take this opportunity of accept-

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ing this amendment. What is the Collector asked to do? He is asked to ascertain whether it is advantageous to and in the interests of the estate to grant the application. The learned Advocate-General has stated that even though the transaction takes place it is still liable to be impeached as any other transaction can be. Then what on earth is the use of the Collector's certificate, if persons who are interested in purchasing the estate have not the satisfaction that owing to the intervention of the Collector, some of the difficulties that might arise after the acquisition have not been removed? If the Collector is merely to receive the application and give his sanction there is no meaning in the owner of an estate getting his sanction if it is not clear thereby that after the acquisition has been sanctioned by him there will be no trouble, no suit or application whatsoever. It is not merely in the interests of the people who may have lent the money, but also in the interests of the zamindars themselves that the Collector should satisfy himself that the property that is going to be acquired is free from encumbrances and that nothing more need be paid for it than what the purchaser for the time being is prepared to pay."

The amendment was put and lost.

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"May I at this stage request you, Mr. President, to allow this Bill to be taken up after lunch? A Bill which has recently been passed by the Council has just been brought to my notice. In that Bill we find a clause corresponding to section 7 of the Act of 1904, which says that this Act shall not affect any alienation made or debts incurred and so on. An estate which is not declared to be an impartible estate by name is made an impartible estate by a clause of this kind. I think that a provision like clause 3 will be necessary. I only move for adjournment of this question for some time, so that the Government may have some time to consider it and change their minds. In all the Bills by which partible estates have been declared impartible, a section on the lines of clause 3 is inserted. I only want some time, so that the Government may consider this question once more before it is too late. I move that the further consideration of this Bill be adjourned till after lunch."

Dr. P. SUBBARAYAN:—"I second it."

Sir ALLADI KRISHNASWAMI AYYAR:—"Mr. President, Sir, I do not think there is any correspondence between . . ."

Mr. SAMI VENKATACHALAM CHETTI:—"On a point of order, Mr. President, the motion before the House is the motion for the adjournment of the consideration of this Bill till after lunch. We are not now discussing the partibility or impartibility of estates."

* The hon. the PRESIDENT:—"The Advocate-General is trying to show that there is no necessity to adjourn the consideration at all."

Mr. SAMI VENKATACHALAM CHETTI:—"By the time he finishes the lunch hour will have come."

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Dr. P. SUBBARAYAN:—“ If the Advocate-General has got any objection to this, he may very well explain it during the lunch interval and he will be better able to convince Mr. Muniswami Nayudu that the clause is not necessary.”

* The hon. the PRESIDENT:—“ The question is that the further consideration of the Bill be taken up after lunch.”

The motion was carried.

Mr. M. S. SRESHTA:—“ May we take a resolution now, Sir? ”

* The hon. the PRESIDENT:—“ The House will now adjourn and reassemble at half past two.”

After Lunch—(2-40 p.m.)

* Diwan Bahadur B. MUNISWAMI NAYUDU:—“ Sir, I beg to move the following amendment:—

‘ For clause 4 of the Bill substitute the following:—

‘ Nothing in this Act shall affect or prejudice the rights in law of the creditors or of the members of the family of the person from whom the estate is acquired by exchange or purchase.’

The object of this amendment is to provide, by way of caution, for the rights of parties who will be affected by this Bill. The original clause 4 has been deleted; it is made part of clause 3. I move that this may be added as clause 4 of the Bill.”

Mr. T. C. SRINIVASA AYYANGAR:—“ I second it.”

* The hon. Sir ARCHIBALD CAMPBELL:—“ Sir, I move that the consideration of this Bill be postponed till Monday, in order that this amendment may be examined by the Advocate-General. I understand that the principle of the amendment is accepted by all parties and the Advocate-General would like to have some time to examine the exact wording. Monday is an Official Day, but the Leader of the House has agreed that this may be taken up as the first business.”

* The hon. the PRESIDENT:—“ I may remind the House that clause 3 has not been put to vote. While that clause was under consideration, the motion for adjournment was accepted by the House. I shall put clause 3 as amended to the vote of the House.

“ The question is:—

(i) ‘ alienate ’, ‘ alienation ’ and ‘ alienated ’ wherever the words occur shall be changed into ‘ sell ’, ‘ sale ’ and ‘ sold ’ respectively.

(ii) (a) In the proviso to clause (o) of sub-clause (1) in line 3 at page 4, the words ‘ or estates ’ shall be omitted.

(b) In lines 14 and 15 at page 4, for the word and figure ‘ section 9 ’, the word and figure ‘ sub-section (4) ’ shall be substituted.

(c) In the last line, the word ‘ said ’ shall be omitted.

(iii) At the end of sub-clause (1), the word ‘ and ’ shall be inserted.

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(iv) *Sub-clause (2) shall be recast as follows:—*

‘(2) Sub-section (3) shall be renumbered (5) and the following shall be inserted as sub-sections (3) and (4), namely:—

“(3) The estate or estates or part or parts of an estate or estates obtained in exchange for or acquired with the proceeds of the sale of an impartible estate or any part or parts thereof under clause (c) of sub-section (2) shall, for all the purposes of this Act, be deemed to be an impartible estate or to form part or parts of the impartible estate, as the case may be.

(4) The Local Government may make rules for regulating the grant of certificates under the proviso to clause (c) of sub-section (2) and generally for carrying out the purposes of of the said clause ”,’

The amendment was carried.

The hon. Sir ARCHIBALD CAMPBELL:—“ Sir, I beg to move that the further consideration of this Bill be adjourned till Monday morning.”

Mr. K. R. VENKATARAMA AYYAR:—“ I second it.”

The motion was put and carried.

IV.—RESOLUTIONS ON MATTERS OF GENERAL PUBLIC INTEREST.

ENFORCEMENT OF COMMUNAL GOVERNMENT ORDER IN THE LOCAL BODIES IN THE PRESIDENCY.

* The hon. the PRESIDENT:—“ The following resolution with the amendments moved already—on the agenda paper—by Messrs. Muniswami Pillai and Sreshta was under consideration on the last non-official day, i.e., on the 11th November 1933:—

‘ This Council recommends to the Government to take early steps to enforce the communal Government Order in the local bodies in the Presidency.’

“ Mr. Muniswami Pillai’s amendment is to *substitute* the word ‘immediate’ for the word ‘early’ and Mr. Sreshta’s amendment is to *insert* the words ‘the principle underlying’ after the word ‘enforce.’

“ The resolution along with the amendments are for the consideration of the House.”

* Mr. M. DEVADASAN:—“ Sir, I support the principal motion moved by my hon. Friend, Mr. Ahmed Miran Sahib, and the amendments moved by hon. Friends, Messrs. Muniswami Pillai and Sreshta. From the point of view of the Depressed Classes, I support the main resolution as amended. Before saying anything upon the necessity of introducing the principle underlying the Government Order enforcing communal rotation, I wish to place a few facts before this hon. House. I want to give a few instances which would show to the House that